

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR., ) C.A. No. 04-297 ERIE  
Plaintiff )  
V. ) District Judge McLaughlin  
CITY AND COUNTY OF ERIE ) Magistrate Judge Baxter  
ET AL. Defendants.)

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure 56, Warren Durham Jr., Plaintiff in the above captioned matter, move the Court to enter judgment in his favor and against Defendant Bruce Tackett and avers as follows:

1. Based upon the facts as submitted in the pleadings and applicable law, the Plaintiff is entitled to judgment as a matter of law.
2. Given the undisputed facts of record, no reasonable jury would absolve the Defendant for deprivation of Plaintiff's constitutional right to a fair trial.
3. Based upon the facts of the case and applicable laws, Defendant Tackett is not entitled to qualified immunity.
4. Based upon the facts of the case and applicable law, Defendant Tackett is subject to liability under section 1983.

WHEREFORE, the Plaintiff respectfully request this Honorable Court to grant judgment in his favor.

Respectfully submitted,

  
WARREN DURHAM JR.

ED  
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CLERK  
U.S. DISTRICT COURT

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Plaintiff )  
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ET AL, Defendants. )

**CERTIFICATE OF SERVICE**

I, Warren Durham Jr., hereby certify that I am this day serving a true and correct copy of the foregoing "Motion for Summary Judgment" upon the persons named below by FIRST CLASS MAIL, postage prepaid, to:

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WARREN DURHAM JR.  
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DATED: 8/25/06